THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

WPMS No.995 of 2003 (M/S) decide on 01/10/2003

Sri Laxmi Narain and another Vs. Civil Judge (SD) Dehradun and another

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :-01.10.2003 Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINTIAL

Writ Petition No. 995 of 2003 (MS)

1. Sri Laxmi Narain s/o Sri Dewan Chand
2. Smt. Vimla Devi w/o Sri Laxmi Narain
   Both resients fo 28 Karanpur, Dehradun ……. Petitioners

Versus

1. Civil Judge (SD) Dehradun
2. Sri Bhusan Lal Saundhi s/o Sri N.B.Saundhi
   R/o 12 Block Karanpur, Dehradun …….. Respondents

Sri S.K. Jain, Advocate for the petitioner
Standing counsel for the respondent no.1

Dated: October 1, 2003

Hon'ble Rajesh Tandon J:

The petitioners have filed the present writ petition praying for a writ, order or direction in the nature of mandamus commanding the respondent no.1 to decide the P.A. Case No. 13 of 2003, Sri Laxmi Narain and another vs. Sri Bhusan Lal Saundhi within a reasonable time.

Brief facts giving rise to the present writ petition are that an application under section 21 (1)(b) of U.P. Act No. XIII of 1972 was filed by the petitioners which was numbered as P.A.Case No.13 of 2002 in the Court of respondent no.1. The allegations of the petitioners are that they are the landlord of the building in question, which is in dilapidated condition, therefore, the same may be released in their favour. The release application was filed on 15.7.2002 and the matter is still pending for disposal as will appear from the copy of the

order sheet. The learned counsel for the petitioner has also urged that the case is ripped for hearing in as written statement has also been filed. Section 21 (1) (b) of U.P. Act no. 13 of 1972 provides for the release of the building on account of the fact that the building is in dilapidated condition and is required for the purpose of demolition and new construction.

Rule 17 has been framed in order to satisfy the Prescribed Authority before allowing the application for release of a building under section 21(i) (b) on the ground that it is required for purposes of demolition and new construction. If release is granted under sec. 21 (1)(b) of U.P. Act No.13 of 1972, the tenant has right under section 24 of the Act to re-enter in the premises after reconstruction. Since the enactment is for the benefit of the society, therefore, such matters are required to be decided at an early date.

Rule 15 (3) of the Act, provides as under:

(3) Every application referred to in sub-rule (1) shall, as far as possible, be decided within two months from the date of its presentation.

The requirement of the landlord is the sole purpose for the release of building under Section 21 (1)(a) and (b) of the Act and no one should be deprived of his valuable rights for any inaction of the Court. The well known maxim that the act of the Court should not prejudice anyone ‘actus curiae neminem gravabit. As will appear from the observations of the Apex Court in the case Mohammad Gazi vs. State of M.P. & others, J.T. 2000 (4) SC 55, as under:

“The facts and circumstances of the case, themaxim of equity, namely, actus curiae neminem gravabit- an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon

justice and good sense which serves a safe and certain guide for the administration of law."

Thus the petitioner is directed to file an application before the Prescribed Authority concerned for expeditious disposal of his case. The Prescribed Authority shall decide his application within a month after receiving certified copy of this order in accordance with law.

With the above observations the writ petition is disposed of.

(Rajesh Tandon, J.)

1.10.2003
*Dhyani